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WITNESS PROTECTION: Keeping Our Side Of The Bargain

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A Report and Proposal by

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WITNESS PROTECTION:
Keeping Our Side Of The Bargain

Introduction

The greatest deficiency in our criminal justice system today is our lack of protection for witnesses. Although it is a crime to intimidate a witness,[1] there is no formal procedure for law enforcement to provide protection to those who are courageous enough to step forward and testify at criminal trials. What protection that is offered is done on an *ad hoc* basis and only if a law enforcement agency has the resources to spare at the time the protection is needed.

This situation came to my attention last year. The family of Jason Sadler, a Roxbury youth who was scheduled to testify against neighborhood gang members, was forced into hiding because of Jason's involvement with the case. Although the District Attorney provided what protection he could, he did not have resources available to him to provide the level of protection required. Often providing witness protection requires a prosecutor to spend money from their operating budget, forcing them to request additional funds from the Legislature to make up for the unexpected expenditures.

Each year the Legislature budgets millions of dollars for every aspect of the criminal justice system: courthouse security, prosecutors, judges, public defenders, clerks, probation officers, and yet, no money is specifically set aside for witness protection.

Furthermore, simply having a witness protection program is not a guarantee of success. The witness protection program that we adopt must be effective, efficient and easy for witnesses and law enforcement to access. Most essential to any new program is that it must be properly funded. For these reasons, I have issued this report to discuss how a state witness protection program may be best implemented and to estimate what such a program will cost.

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[1] M.G.L. ch. 268 §13B states that whoever bribes or intimidates a witness or juror shall be punished by imprisonment in a house of correction for not more than 2 ½ years or in the state prison for 2 ½ - 10 years, and by a fine of $1,000-$5,000.

It is my hope that the Legislature, the Governor and the law enforcement community will work together during the next legislative session to make a state-wide witness protection program a reality.

The Need For Witness Protection

The Federal Witness Protection Program, administered by the United States Marshall's Service, has been in effect for many years and has taken on almost mythical proportions. Books, movies, and television shows, ranging from documentary to farcical comedy, have dealt with this program. The image of a reformed gangster who exchanges testimony for a new identity and life in an unsuspecting suburb captures the public imagination. Although the U.S. Marshall's program has been in place for decades, other nations and the states have been slow to create their own programs. This has started to change, however, as the problem of witness intimidation has grown and as law enforcement begins to recognize the need for greater witness protection.

It is a myth, however, to think that the only beneficiaries of a witness protection program are reformed mobsters who have "cut a deal" with prosecutors. Criminal justice experts have identified a growing trend of intimidation and violence towards witnesses in an effort to prevent them from testifying at a criminal case. Offenders damage personal property and lurk ominously around people's homes. Gang members have been known to pack courtrooms and stare down witnesses. One Florida defendant actually threatened grand jury witnesses in his case by a telephone located in the jail where he was being held. In Washington D.C., gang members hung posters around the neighborhood naming prospective witnesses and warning that those who cooperate with police will die. As Alberta Burden, a 60 year old Florida woman, Jennifer Rivera, a 16 year old Rhode Island girl, and 7 year old B.J. Brown from Connecticut found out, these are not idle threats. Each of these people died because they dared to come forward and assist law enforcement. As one New York prosecutor commented, "A decade ago there were threats against witnesses, now the threats are being carried out."[2]

The criminal justice system itself in some ways actually helps the criminal offender intimidate witnesses. Through the use of liberal discovery laws, the defendant and his allies obtain enough information about witnesses to track down and terrorize them. Some gangs have been known to hire private investigators or use friends and relatives to access motor vehicle or other public databases.

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[2] Queens County, NY Assistant District Attorney Michael Mansfield, Randy Fitzgerald, "The War Against Witnesses," *Reader's Digest*, December, 1998

The result of this intimidation and violence is that crime victims are either refusing to testify, will change their testimony, or have sudden bouts of amnesia in an effort to save their lives. This often forces the prosecutor to drop the charges and allow the criminal offender free to return to the streets. As one commentator recently stated, "this brutal wave of intimidation is increasingly paralyzing American justice."[3] Some recent examples are:

After a shooting rampage in a Des Moines café, only three of roughly 40 patrons on hand would cooperate with authorities. The reason: gang members had gone door-to-door warning witnesses not to cooperate.

Despite a crowd of 250 people watching a gang fight at a Pittsburgh softball game that resulted in two deaths, players on the field claimed they saw nothing. Witnesses still refuse to talk about the gang slaying at a 1994 San Francisco concert.[4]

In 1995, Minneapolis homicide Sergeant Pete Jackson testified to the Minnesota Judiciary Committee about the cases he lost because fearful witnesses refused to testify. He recounted the cases of Kenosha Larkin, shot in her neighborhood by someone she'd known since childhood; of Allen Wheatly Jr. who was visiting his uncle when he was shot and killed by gang members; and Terry Edwards, who was savagely beaten by a Detroit gang and left in a north Minneapolis yard. "I know who killed Allen Wheatley," Jackson said. "I have a witness. But he has said he will not give a statement because he is afraid. He's a family man. He has to live in this neighborhood and he's afraid for himself, his wife and his family."[5]

Today's breed of violent criminal is able to terrorize entire communities through "execution, assault or public humiliation of victims, witnesses or their families," reports the federal National Institute of Justice. "Witness intimidation is widespread, increasing and having a serious impact on the prosecution of crime across the entire country."[6]

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[3] Fitzgerald, "The War Against Witnesses".
[4] Id.
[5] Patricia Lopez Baden, "Witness Intimidation is a Growing Problem—Many Too Afraid To Testify; State Protection Needed, Police Say" *Minneapolis Star Tribune*, March 14, 1995, pp. 1B.
[6] *Quoted in*, Fitzgerald, "The War Against Witnesses".

Two of the most effective weapons against this growing problem are to increase the penalties for intimidating witnesses and to establish a formal witness protection programs. Too often, local and state law enforcement is forced to scrounge money for the price of a bus ticket or put witnesses up in hotels on their personal credit cards rather than lose a prized witness.[7] Although the state programs do not need to be as extensive or expensive as the federal version, they can provide enough security to cause potential witnesses to come forward, or to keep witnesses from refusing to testify out of fear. Greg Totten, Ventura County, California Chief Assistant District Attorney said, "In the day and age in which we live, the character of criminals is changing and they present a larger problem, a greater threat than they used to, so [the witness protection program] has been a valuable program for us."[8]

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[7] Baden, "Witness Intimidation is a Growing Problem—Many Too Afraid To Testify; State Protection Needed, Police Say".
[8] Holly J. Wolcott, "Witness Protection Playing a Prominent Role", LA Times, May 8, 2000, p.1.

Witness Protection In Other States

In recent years, several states have examined the issue of witness safety and have created programs that, while not as extensive or costly as the federal model, offer valuable protection to witnesses.

Arizona

- Arizona law provides that a county attorney may provide for the security of government witnesses, potential government witnesses and their immediate families in pending criminal or civil proceedings or investigations.
- The person must be subject to danger or bodily injury by virtue of their testimony. Witness protection may include providing for the health, safety, welfare, and housing facilities of witnesses and their immediate families.[9]
- The Director of Public Safety, acting with the concurrence of the Attorney General, may upon his own initiative or at the request of any county attorney or law enforcement agency provide for the security of governmental witnesses.[10]

California

- Since its creation in January, 1998, the California Witness Protection Program has assisted more than a 1,000 witnesses. At risk witnesses have been relocated, given new identities or received other types of protection.
- The program was created to address a variety of problems. Most prominent was the rising number of gang and organized crime arrests, causing more instances of threats toward witnesses whose testimony can make or break a case.[11] The lead author of the law, Assemblyman Bob

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[9] Arizona Statutes, 11-536.
[10] Arizona Statutes, 41-196 (A).
[11] Holly J. Wolcott, "Witness Protection Playing a Prominent Role", LA Times, May 8, 2000, p.1.

Hertzberg, contended that gang murderers, particularly in Los Angeles, were going free, partly because witnesses were afraid to testify.[12]

- Court records show that from 1988 to 1991, a prison gang known as La Eme, ordered 12 murders of inmates, and that the same gang has been linked with at least 5 murders outside of prison.[13]
- In addition to gang activity, California's "three strikes" law and stiff penalties for violent crime can drive an accused person to try anything to avoid death row or life in prison.[14]
- According to a California Department of Justice report, a majority of cases requiring witness protection are gang-related, followed by those involving drugs, domestic violence or any criminal matter in which the suspect has threatened to hurt a witness.[15]
- California's county prosecutors had operated limited witness protection programs before the new law took effect, but without financial aid from the state. The new law offered the local prosecutors an additional $3 million a year in state aid.
- The program has a single employee and a part-time staffer. Under this program, county prosecutors apply to the attorney general's office for funds to bolster their own efforts to protect witnesses.
- Witnesses may be assigned an armed guard, a fictitious identity, a new residence, and funds for housing and utility deposits. Protection may last six months or more, and may include witnesses' relatives or friends. In exchange, the person must agree to testify truthfully, obey all laws, comply with civil judgments, cooperate with protection authorities and regularly report their addresses to law enforcement.

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[12] Carl Ingram, "State's Witness Protection Effort Audited" LA Times, November 29, 1999 p. 3.
[13] Maura Dolan, "When Naming Witnesses Means They'll Be Killed," Los Angeles Times, July 23, 2000, p. 1.
[14] Id.
[15] Id.

- California's witness protection program requires that the Attorney General establish a liaison with the federal government to maximize federal funds that may be available to implement the program.[16]
- The costs of the California program have grown dramatically since being created. In less than two years it nearly tripled in expenditures. A state auditor's report showed that in its first year the program spent or approved $2.2 million for witness protection. In the first 10 months of 1999, the program's expenditures rose by another 223%.
- The number of witnesses participating in the program grew from 154 in January 1999 to 504 in October 1999. The Attorney General's Office stated that the reason for the dramatic increase in expenditures and protected persons was because of an aggressive outreach program with county prosecutors.[17]

Connecticut

- **Connecticut enacted a Witness Protection Program after a 7-year-old Bridgeport boy, B.J. Brown, witnessed the 1997 non-fatal shooting of his stepfather.** B.J.'s information led to the arrest of the gunman, Russell Peeler, who was subsequently released on bail. Nine months after the initial shooting, the stepfather was murdered leaving only the boy to testify against Peeler. B.J. and his mother moved to a new neighborhood, but this was not enough to protect them. A judge in Peeler's case ordered that their new address be turned over to Peeler's attorneys.
- On January 7, 1999, B.J. and his mother were found dead of bullet wounds.[18] In June, 2000, Peeler and his brother were convicted of the murder of B.J. and his mother.[19]

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[16] California Code §14030 (b).
[17] Carl Ingram, "State's Witness Protection Effort Audited" LA Times, November 29, 1999 p. 3.
[18] Mike Allen, "Mother, Son's Shooting Deaths Leave Questions About Witness Protection," The Dallas Morning News, January 17, 1999, p. 15A.
[19] Denise LaVoie, "Conviction In Death of 8-Year-Old," AP Online, June, 8, 2000.

- **This case brought about the political will to increase spending on witness protection, which had previously been budgeted only $30,000 a year. Representative Mike Lawlor, chairman of the Judiciary Committee stated, "The Legislature has made a commitment to provide any amount of money that's necessary to protect witnesses."**[20]
- In October, 1999, Connecticut established a Witness Protection Unit within the Chief States Attorney's Office that had special protections for child witnesses. A coordinator, a secretary, and two investigators staff this unit. Since its inception, the Unit has assisted approximately 350 people in 85 cases.[21]
- In its first year, the Unit was appropriated $250,000 for witness services. Because the Unit exceeded its budget, the Legislature increased the Unit's appropriation for fiscal year 2000-2001 to $350,000. Housing represents the bulk of the Unit's expenditures, nearly 75% of its outlays. The typical protected witness will spend 30-45 days in hotels, and due to the great expense of housing, the Unit staff is exploring the possibility of establishing safe houses. Other expenses include money for food and incidentals, moving expenses, security and overtime police expenditures.
- The types of cases most often covered by the Unit have been homicides and domestic violence cases. Although there have been some gang cases, these are not a significant portion of witness protection cases.

Illinois

- Illinois created a witness protection program specifically for those witnesses who assist law enforcement in investigations or prosecutions of gang crimes or gang members.[22]

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[20] Adam Gorlick, "Lawmakers Talk About Beefing Up Witness Protection Program" The News-Times, January 1999.
[21] These statistics were provided by the Unit coordinator, Tracey Kelly (860-258-5905) on September 6, 2000.
[22] Illinois Statutes 725 ILCS 172/5-20.

- The State Treasury administers the Gang Crime Witness Protection Fund[23] which has money appropriated to the fund, grants, or other funds made available to the state police to assist the State's Attorneys and the Attorney General in protecting victims and witnesses.
- The Department of the State Police, in consultation with the Attorney General, shall promulgate rules for the implementation of the Gang Crime Witness Protection Program.[24] Illinois also has a broader "Witness Protection Act."[25]

Maryland

- Maryland established the Victim and Witness Protection and Relocation Fund in 1994.[26]
- The program is administered by the State's Attorney's Coordinator in accordance with regulations adopted by the State's Attorney's Coordination Council after consultation with the State Board of Victim Services.[27]
- This program funds a range of services designed to add a layer of personal protection and safety for victims and witnesses who have been threatened and/or intimidated by offenders.

Maryland's Protection and Relocation Program funds State's Attorneys who wish to provide the following victim services:

A. Temporary housing to a threatened or harassed victim/witness and, when appropriate, the victims/witnesses' spouse and/or dependents;

B. Moving and transportation costs to relocate a victim and/or witness from the immediate area of danger;

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[23] Illinois Statutes 30 ILCS 105/5.438.
[24] Illinois Statutes 725 ILCS 172/5-15.
[25] Illinois Statutes 725 ILCS 245/1.
[26] Maryland Code 27 §836.
[27] Maryland Code 27 §835 (b).

C. Transportation from relocation site to participate in court proceedings when the testimony of the victim/witness is necessary;

D. Payment of professional counseling, when indicated, for threatened and/or harassed victims and witnesses; and

E. Assistance in resolving employment problems as a result of relocating, including arranging for possible transfer of the victim/witness's position to another area.

Since 1994, program funds have been used to help almost 100 victims/witnesses in a variety of ways. **One of the most active witness protection programs in Maryland is the Baltimore City program.**[28]

- In 1997, the State's Attorney Office for Baltimore City received a grant of $150,000 from the U.S. Department of Justice's Bureau of Justice Assistance to help get the witness protection program up and running.[29]
- Since then they have provided protection to many witnesses involved in murder, domestic violence, rape and robbery cases.
- This program operates without a set budget, but is simply reimbursed by the state for what it spends on protection.
- This is a very costly undertaking in that the program administrator estimates that the program provides an average of $35,000 of protection for each murder prosecution in Baltimore in a city that last year experienced 318 murders.

Missouri

- In 1983, Missouri established its Witness Protection Program.[30] Among its provisions, it allows the Director of the Department of Public Safety, upon the request of the Attorney General or any prosecuting attorney, to provide for the security of a witness, potential witness, and his/her immediate family in criminal justice proceedings instituted or

[28] DiTanya Madden, Witness Security Coordinator, Baltimore State's Attorney's Office (410) 545-6433.
[29] DOJ also provided grants to similar programs in Savannah, GA and Fresno, CA.
[30] 491.640, RSMo.

investigations pending against a person alleged to have engaged in a violation of state law.

- Such protection may be provided if a clear and present danger exists that the testimony by such a witness might subject the witness or member(s) of his family to the threat of bodily injury.
- The protection may continue for as long as the threat of danger exists.
- All applications for witness protection must be submitted by or through a county prosecuting attorney's office or the office of the circuit attorney.
- The exception to this procedure would be cases where evidence can be shown that there is a problem with a particular county prosecuting attorney or circuit attorney, which would preclude involvement of that particular office.
- In addition, all applications must be forwarded to the Missouri Office of Prosecution Services for review and recommendation prior to being submitted to the Department of Public Safety.
- The Witness Protection Program is funded through state general revenue, and the amount of monies available is dependent upon annual appropriations.
- This program was first funded in FY 1985.[31]

Rhode Island

- Rhode Island established a Witness Protection Review Board to provide protection on a statewide basis.[32]
- Until recently, the Rhode Island program operated as follows: if a law enforcement official felt that a prospective witness required protection, the official must notify the attorney general; an assistant attorney general and the law enforcement official then interviewed the witness and determined the degree of risk; finally, the Witness Protection Review Board would

[31] Eric Shepherd, Program Specialist, Missouri Department of Public Safety, 573/751-2761
[32] RI General Laws ch. 12-30.

determine an appropriate budget for the protection of each witness and would monitor expenditures.[33]

- The Attorney General paid for the costs of the program and for protective services from his budget.

This program's usefulness was called into question in May, 2000 when Jennifer Rivera, a 15-year-old Providence girl, was gunned down the night before she was to testify against local gang members. After the Rivera murder, Rhode Island Attorney General Rhode Island Sheldon Whitehouse organized a review of the program. Whitehouse asked local and federal law enforcement officials and the members of the state's Witness Protection Review Board to recommend improvements in the system including guidelines and risk factors that are appropriate to be considered when evaluating risk to witnesses. One of the problems Whitehead immediately identified was the lack of a review process that police officers and prosecutors can use to make proactive recommendations regarding witness security needs:

> **"The Rivera murder demonstrates the need to expand our present system of witness protection. What we have now in effect is a bank account to pay expenses of witnesses who seek our help. The current system doesn't go far enough. I want to establish a proactive and more responsive process with established protocols for threat evaluation. Law enforcement officers and prosecutors work hard to protect witnesses and they need to have the resources and systems available to do so more proactively."[34]**

As a result of the Rivera Murder, the Rhode Island Attorney General conducted a full review of the witness protection program and is in the process of creating new procedures for accessing the program.

Virginia

- The State Police maintains Virginia's witness protection program.[35]

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[33] RI General Laws ch. 12-30-8.
[34] Attorney General Whitehouse Press Release, May 31, 2000.
[35] Virginia Code4 ch. 8 §52-35.

- This program temporarily relocates or otherwise protects witnesses and their families who may be in danger because of their cooperation with the investigation and prosecution of serious violent crimes or felony violations.
- Witnesses are referred to the program by different state agencies, including the DA's office and Victim Witness Coordinators who are assigned to all of the states prosecutor's offices.
- The program has two primary functions: providing money for traditional relocation and protective services, and, where necessary, for providing technical personnel to install and maintain security systems in the witness' home.
- The majority of cases that produces witness protection issues are related to drugs and narcotics. This program assists approximately 60 people, including witnesses and their family members, each year.
- The current budget for this program is $120,000. For the last several years, the Virginia program has been funded by a federal Byrne grant to the Virginia Department of Criminal Justice Service.[36]
- This grant terminates at the end of this year and the State Police is now trying to find a new revenue stream for the program.[37]

[36] The grant money is distributed by a six person advisory board within the Department.
[37] Special Agent Mark Austin 804-323-2019 provided information on the Virginia program.

A Proposal For Massachusetts

After learning of Jason Sadler's case in Boston and hearing of the problems law enforcement has faced around the country, I came to the conclusion that there was a need for a comprehensive, statewide witness protection program in Massachusetts. Accordingly, I filed a witness protection bill in the fall of 1999. This has led to several productive discussions with representatives of the Attorney General's Office, various district attorneys' offices, representatives of the law enforcement community, and advocates for victims and witnesses. As a result, my original proposal has undergone several changes. It is my hope that these changes will address the concerns and needs of police, prosecutors and witnesses alike.

Legislation Proposed During The 2000 Legislative Session

A. Original Proposal.

In July, 1999, I filed Senate bill number 1998, **"An Act Relative to Witness Protection and the Crime of Witness Intimidation"** (hereinafter "S. 1998"). This bill outlined a procedure for the protection of witnesses during criminal investigations and related court proceedings. This bill defined a "witness" as any person who is participating in a criminal investigation or trial, and any of that person's relatives, friends, or associates who may be endangered by the person's involvement with the criminal case.

Significantly, S. 1998 gave primary responsibility for witness protection with the Attorney General (AGO) who was to coordinate state, county and local law enforcement agencies to protect the health, safety and welfare of witnesses. If a district attorney determined that a witness was endangered due to their involvement in a criminal investigation, he was required to develop a recommended plan of protection and submit it to the AGO. If the Attorney General approved of the recommended plan, the AGO was to coordinate and secure protective services including:

- armed protection or escort, by state or law enforcement officials;
- physical relocation to an alternate residence;
- housing expenses;
- transportation or storage of personal possessions;

- basic living expenses such as food, transportation utility costs and health care; and
- seek a restraining order on any individual identified as a threat to a witness.

In an emergency situation, a district attorney could take steps to immediately protect a witness and then report the situation to the AGO. Once protected, the witness could continue to be protected until the criminal case was concluded, or until the AGO determined that the witness was no longer at risk.

Senate No. 1998 also mandated that the Attorney General give special consideration to a witness who is elderly, a child, a victim of domestic violence, the disabled or infirm, or who is a witness in a proceeding or investigation involving organized crime, gang activity, drug trafficking or other violent crime.

In return for protection, S. 1998 required certain responsibilities from witnesses including: to cooperate fully with law enforcement, a promise to testify whenever asked by the prosecuting office, and to not commit any crimes while in the protection of the state. If the agreed to responsibilities were not met by the witness, the Attorney General was empowered to revoke the protection.

Finally, S. 1998 sought to amend the witness intimidation statute to increase the maximum fine from $5,000 to $50,000.

B. Criminal Justice Committee Hearing.

The Criminal Justice Committee held a public hearing on S. 1998 on November 10, 1999. The Committee heard testimony from representatives of the Massachusetts Police Chief's Association, religious and secular leaders of a gang prevention program in Dorchester, and Middlesex District Attorney Martha Coakley. Police Chiefs George DiBlasi and Ned Merrick from the Police Chief's Association strongly supported the bill, with minor amendments. In their words, this measure was needed to break down the "walls of silence" that exist in some neighborhoods. Chief DiBlasi did suggest, however, that local law enforcement be given a greater role in identifying witness protection situations and in providing emergency services. Father Filipe Teixeira from St. Martin de Pones Church in Dorchester and Terry Oded Gross from the Ella J. Baker House in Dorchester also testified in favor of the bill. They discussed the Jason Sadler case and

said that a witness protection program should have been in place five years ago. Finally, District Attorney Coakley spoke of the financial pressures that witness protection places on prosecutor's offices.

As a result of the public hearing and further meetings between the Criminal Justice Committee staff and representatives of the Attorney General's Office, various district attorneys' offices, and other interest groups, the Committee redrafted the bill. This version increased the power of the district attorneys to put a protection plan in place. Whereas the original plan called for the Attorney General to approve of the district attorney's plan and then disburse funds, the redrafted version mandated that the Attorney General promulgate guidelines for witness protection, and so long as the DA's plan complied with the guidelines, the necessary funds would be disbursed. In addition, a change was made to the emergency protection provision. Originally, only a district attorney could provide emergency protection. This was changed on the recommendation of the Massachusetts Police Chief's Association to allow other law enforcement agencies to step in and provide reimbursable emergency protection.

The Committee favorably reported the redrafted version, S. 2087, to the Senate on January 31, 2000. The bill was referred to the Senate Ways and Means Committee where it remained for the rest of the formal legislative session.

Questionnaire

In August 2000, I sent a questionnaire to each of the district attorneys asking for information on how witness protection is currently handled and how much their efforts cost each year. The responses were very helpful in better understanding what services are currently provided, what needs prosecutors have in this area and how to better frame a new witness protection program.

Each of the district attorneys who responded to the questionnaire reported that they had several cases that required witness protection in the last year. The greatest problem faced by the district attorneys is that an at-risk witness will flee the jurisdiction and refuse to come back to the state or the county for the trial. For instance, in the Northwestern District, the victim of domestic violence relocated to a different part of the country to escape her abuser, and then when the criminal trial came up, it was not possible for the DA to provided the round-the clock protection required for the victim and her small children to return to the area. The prosecutor was not able to go forward in this case because the danger to the victim was too great.

Bristol County reported that they had at least six cases in the last year that involved serious physical threats and required some form of witness protection. Northwestern District Attorney Elizabeth Scheibel reports that nearly one quarter of all domestic violence witnesses and one third of all narcotics case witnesses express some level of concern for their safety. Suffolk District Attorney Ralph Martin estimated that 75-80% of victims and 60% of witnesses in domestic violence cases express concerns for their safety. Additionally, the majority of domestic violence victims seeking protection in Suffolk County are 25 to 35 year old women with children.

According to the questionnaire respondents, witnesses involved in domestic violence cases are often in the greatest need of protective services. Other common responses to what cases most often produce witness protection issues are homicides, gang related crime and drug trafficking.

Despite the fact that some types of witnesses or cases more typically require protective services than others, all of the respondents agree that all witnesses legitimately seeking protection should be afforded equal access to protection. In addition, the types of cases that most often require protection may change over time. Although the DA's have

identified domestic violence as a top priority now, in California the top priority is by far gang related cases; in Baltimore it is murder prosecutions. The witness protection program that the Legislature puts into effect should be flexible enough to change with the times.

The respondents uniformly stated that during the investigatory phase of a case, witnesses often express personal safety concerns to the state and local police. After the matter has been referred to the prosecutor, witnesses most often express safety concerns to victim witness advocates (VWA) and assistant district attorneys. Often, the ADA will interview the victim or witness, and then will make a protection determination in consultation with the VWA and the police. In most offices, VWA will serve as the primary liaison between the DA's office and service providers and the at risk witnesses.

Typically, at risk witnesses will be placed in a hotel, offered escort services, police protection, etc. The witness is typically kept at a hotel only until they can be relocated into another safe place, such as a shelter. One DA stated that they will often work with Greater Boston Legal Services to assist a victim or witness to relocate when they could be at high risk of harm if they remain in their present home. In at least one county, the District Attorney's Office has an agreement with local hotels to provide services and the fee is paid by the DA's office. Victim witness advocates, however, often must pay for the witnesses' meals and incidentals, and are later reimbursed by the DA's office.

Another form of protection is some form of police protection, either an escort to and from court, or in some cases, around the clock protection. One DA, however stated that they were only able to offer police protection in rare cases due to a lack of resources. As an alternative to police protection, one DA's Office has been offering AWARE project alarms to victims of domestic violence. Funded by a Violence Against Women Act (VAWA) grant, the project works in conjunction with the ADT alarm company to install silent alarms in the homes of high-risk victims of domestic violence. While in her home, the victim or witness may activate the alarm by pushing a button on a pendant worn around her neck. The ADT Company then notifies the local police for a priority response. ADT can also provide a keypad that will sound an alarm to the police over the

telephone lines. The same DA's office has also started to distribute emergency 911 cell phones to at risk victims and witnesses.

Each of the respondents stated that the offered services are typically kept in place until the witness is no longer at risk. Many forms of protection are no longer needed after the end of the criminal prosecution. Still, victim witness advocates may still work with the witness for a period of time after the trial to assist with safety planning, protection orders or relocation.

One DA suggests that for a witness protection program to work, it cannot be too rigid. Rather the program should be flexible and rely on the judgment of the various district attorney's offices based on the witness's safety needs, the existence (or lack thereof) of other supports, the victim or witnesses financial resources, and the other pertinent facts of the case.

In most cases, the district attorneys were not able to provide concrete numbers on how much their offices have spent on witness protection in recent years. In part, this is due to the fact that witness protection services are often paid for from several different parts of the district attorney's budget or from drug forfeiture money. Plymouth County, however, reported that in the last 5 years the most it had spent on witness protection in one year was $10,000. The most the Northwestern District (Franklin and Hampshire Counties) has spent in one year is $5,000.

According to the 1990 Census, Plymouth County has a population of approximately 435,276—which is 7.24% of the population of Massachusetts. The Northwestern District has a population of approximately 216,660—or 3.6% of the state's population. If the witness protection expenditures for these jurisdictions is extrapolated to the state as a whole, one could argue that the collective amount currently spent on witness protection is approximately $138,000. Of course that does not take into consideration the fact that many factors such as housing are far more expensive in urban areas such as Boston or Cambridge than they are in Brockton or Hampshire County. Still, the figure gives a good estimate of the financial drain imposed on local prosecutor's budgets and gives a possible starting point for future funding of a state-wide witness protection program.

When asked if a DA's office ever had to request supplemental budget money from the Legislature to pay for witness protection, at least one DA stated that they had. Others replied that they only utilized their operating budget. All of the respondents, however, stated that at some point they were forced to prioritize, with the unfortunate result of not offering some services or protection. One DA stated, "Monies for witness protection would help alleviate these financial concerns, allowing us to provide a full range of protective services." There is general agreement among the respondents that if a witness protection program were established, more services could be provided, especially to witnesses in domestic violence and narcotics cases.

The questionnaire also produced other interesting proposals for greater witness services in addition to a witness protection program:

Witness Compensation. The witness fee of $6 plus $.10 per mile has not been increased since 1984 when it was first enacted. The fee is supposed to cover transportation costs, but with the present cost of parking and fuel, it does not. These costs, in addition to the cost of child care or missing work makes testifying for the Commonwealth cost prohibitive. Employers must pay jurors for the first three days of jury service. Perhaps it is worth extending such a rule to witnesses as well.

Shelters. One district attorney points out that there is a lack of emergency and long-term shelters able to house women with male children over the age of 12 or 14. Often there is a waiting list for all shelter housing and funding for these important aspects of witness protection should be increased.

Proposal for the 2001 Legislative Session

1. Operation of Program

As a result of this study, I have come to the conclusion that several key changes to my original witness protection bill should be made. I believe these changes will make the proposed program more flexible and efficient for law enforcement and more effective for victims and witnesses.

A. I propose that the Massachusetts Office of Victim Assistance (MOVA) administer this program. There are several advantages to giving MOVA oversight. A persistent question has been how the several prosecutorial offices, ten district attorneys and the Attorney General would interact when accessing the witness protection fund, what office would develop the required guidelines, and who would ultimately control the funds. The structure and mission of MOVA fits the needs of a witness protection program well. The MOVA Board is comprised of Attorney General Tom Reilly, who serves as chair; two district attorneys;[38] and two members of the public.[39] Therefore, the new program can be nurtured and developed by an established Board comprised of people who are already actively involved with victim and witness safety. Unlike my previous proposal, the district attorneys will be able to share in the program's administration. Finally, since three members of the Board will be actually using the fund, they will be in a good position to identify future problems with the legislation or guidelines and to quickly effectuate corrections.

Second, MOVA is actively involved with the training of the victim witness advocates who work in the courthouses, and are assigned to the district attorney's offices and the Attorney General's Office. The victim witness advocates are the primary liaison between the witness and the prosecutor, and often assume coordination of what witness protection there is currently available.

[38] Currently, the two representatives are Northwestern District Attorney Elizabeth Scheibel and Berkshire District Attorney Gerald Downing.

Third, MOVA is responsible for the administration of federal and state grants such as VOCA and Byrne grants. Although there are no federal grants for state witness protection programs currently available, this may change in the near future. The Federal Bureau of Justice Assistance provided sizable grants to three test jurisdictions in 1997 and is now in the process of reviewing the results of those tests. Hopefully, the Bureau of Justice Assistance will soon make funding available to other jurisdictions. For this reason, California's law mandates that its program administrators seek and maximize federal assistance for witness protection. I believe that an office, such as MOVA, that is experienced drafting federal grant requests and maximizing federal dollars should administer our witness protection program.

B. The Rhode Island experience with the Rivera case showed that there must be a **clearly established method for putting law enforcement on notice that the witness feels that he or his family is at risk**. Although the Rivera family claimed that they had made such a request, they were not sure who they made the request to and the Witness Protection Board had no request on file. To avoid such problems, the witness should make his request in writing. The request, whether a letter or standardized form, does not need to be long or complicated, so long as it contains a statement that the person feels threatened and is seeking assistance. This written request, however, should also be simple to deliver, especially in the case of an emergency. For this reason, the new proposal states that the written request may be given to any of the following: the prosecuting officer, a member of state or local law enforcement, a victim witness advocate, or directly to MOVA. In any event, a copy of the request should be forwarded as soon as possible to MOVA.

C. My original proposal stated that special attention should be given to witnesses in specific categories of cases. These included gang-related and domestic violence crimes. After researching this issue, I have come to the

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[39] Currently, the two civilian representatives are Mary Ellen Doyle and Evelyn Tobin.

conclusion that the needs addressed by a witness protection program change dramatically from state to state and evolve over time. In a state as diverse as Massachusetts, each county or prosecuting officer may have widely divergent needs or priorities. For instance, the Hampden County District Attorney may be dealing with a persistent street gang problem, while the issue may be drugs in Bristol County, child abuse in Middlesex County or a white-collar crime being investigated by the Attorney General. For this reason, I have eliminated any suggestion of priorities, thus leaving the discretion and flexibility where it belongs—to the prosecuting officer and law enforcement.

With this new proposal, therefore, MOVA will act as a facilitator for the program. MOVA will develop guidelines, will administer the fund, will keep track of witnesses who have requested protection, and will work with the pertinent prosecuting office to provide the needed protection. Ultimately, however, the prosecutor will be the one who determines the risk to a witness and the level of protection that should be provided. I believe these changes will greatly improve upon the bill reported out of the Criminal Justice Committee during the 2000 legislative session.

2. Costs

Given the information received from the district attorney's offices, and the experience of other states who have created witness protection programs, Massachusetts' program should be initially funded at **$340,000**. This amount will cover the staffing required by a new program and the amount that will be available for witness services.

One full time employee can staff even a witness protection program as large as California's. In order to provide the attention this new program will require, and to not put a strain on the Office of Victim Assistance, an employee and perhaps a part-time support staff member should be added to MOVA. Therefore, I propose appropriating an additional **$40,000** to MOVA for this express purpose.

As was shown above, Massachusetts's district attorneys currently spend approximately $138,000 in witness protection each year. **The purpose of a state-wide program is to expand upon the amount currently being spent and to allow greater outreach to those witnesses who are at risk but may not be currently protected.** To determine a funding level it may be helpful to look at what other states have spent. In its first year of operation the California witness protection program spent $2.2 million. By population, California (pop. 34 million) is about six times the size of Massachusetts (pop. 6 million). If Massachusetts were to spend the same amount as California as a percentage of its population, we would have to budget approximately $367,000 to the new program.

Another example is Connecticut, which spent over $250,000 on its witness protection program in its first year of operation. By population, Massachusetts is twice the size of Connecticut (pop. 3,282,031) and, therefore, to spend the same amount as a percentage of population we would have to budget $500,000.

I propose that the new witness protection program should be funded with **$300,000** in its inaugural year. This amount would be an increase of over 100% from what I estimate is currently spent on witness protection.

If the experience of other states is any guide, however, the expenses of a witness protection program increase rapidly in the first few years of the program's existence. The obvious reason for this increase is that witnesses will utilize the program more often as it becomes better known and outreach efforts are instituted. Still, the $300,000 figure is

minimal when compared to what is currently budgeted for other aspects of the criminal justice system:

Organization/ Service	Line Items	FY '01 Appropriation
District Attorney's Offices	0340-0100 to 1100	$75,147,888
Attorney General's Office	0810-0004	$21,633,622
Comm. for Public Counsel Services	0321-1500, 2, 10	$58,701,540
Judge's salaries	0330-0101, 2, 5, 7	$33,199,562
Court security	0330-3200	$45,550,974
Jury expenses	0330-1000	$ 2,730,000
Witness fees	0330-2300	$ 245,000
Court interpreters	0330-3700	$ 478,436
Total		$ 237,687,022

This portion of the criminal justice system is extremely limited in that this analysis includes only those organizations and services that directly impact the trial phase. Even without taking police and corrections expenses into account, the criminal justice system costs almost $238 million. The amount that I am proposing for the witness protection services would represent just over one tenth of one percent (0.126 %) of what is currently spent on other aspects of trying criminal offenders.

Although we can expect the cost of this program to grow over time, steps can be taken to contain costs. For instance, the lion's share of money in any witness protection program is housing, especially temporary housing such as hotels and motels. For example, Connecticut spends nearly 75% of its appropriation on housing costs. A method of reducing these expenses in the future could be to construct "safe houses" where housing and security can be readily provided. Although this will require a greater initial investment, it could prevent future payments of high rent or hotel fees. Another cost cutting measure could be increased funding through the new program for AWARE type programs, thus cutting down on another costly aspect of witness protection—an around the clock police guard.

There is a tremendous need for greater and more uniform witness protection in Massachusetts. It is unconscionable that prosecutors are forced to scrounge for money to protect witnesses as the need arises. The people of this Commonwealth who are brave enough to step forward and testify in criminal trials deserve better. We can provide that protection by enacting a flexible, effective and fully funded witness protection program. I urge my colleagues in the Senate and the House of Representatives to enact the attached witness protection bill during the upcoming legislative session.

Addendum A
Co-Sponsors of an Act Relative to Witness Protection

Cheryl A. Jacques -- Norfolk, Middlesex and Bristol
Brian Lees – First Hampden and Hampshire
Bruce Tarr – First Essex and Middlesex
Charles Shannon -- Second Middlesex
Linda Melconian -- Hampden
Susan C. Tucker – Second Essex and Middlesex
Brian A. Joyce – Suffolk and Norfolk
Therese Murray – Plymouth and Barnstable
Robert E. Travaglini – Suffolk and Middlesex
Guy W. Glodis – Second Worcester
Susan Fargo – Fifth Middlesex
Jo Ann Sprague – Norfolk, Bristol and Plymouth
Pamela P. Resor – Middlesex and Worcester
Dianne Wilkerson – Second Suffolk

Byron Rushing – 9th Suffolk
James B. Leary – 14th Worcester
Gloria Fox – 7th Suffolk
Marie St. Fleur – 5th Suffolk
Carol C. Cleven – 16th Middlesex
Carol A. Donovan – 33rd Middlesex
Anthony Verga – Fifth Essex
David Linsky – Fifth Middlesex
George Rogers – 12th Bristol
Christopher Hodgkins – 4th Berkshire
Jose Santiago – 16th Essex
Louis Kafka – 8th Norfolk
Brian Golden – 18th Suffolk
Thomas J. O'Brien – 12th Plymouth
Kevin Honan – 17th Suffolk
Robert DeLeo – 19th Suffolk
Peter Koutoujian – 10th Middlesex
David L. Flynn -- 8th Plymouth
Ruth Provost -- 2nd Plymouth
Harold P. Naughton Jr. – 12th Worcester
Patricia D. Jehlen – 30th Middlesex

ADDENDUM B
SENATE BILL NO. 162

AN ACT RELATIVE TO WITNESS PROTECTION AND THE CRIME OF WITNESS INTIMIDATION

SECTION 1 The General Laws are hereby amended by inserting after Chapter 258C the following new chapter:-

Chapter 258D

Section 1 As used in this chapter,

"Witness" means any person who is participating in a criminal investigation or who has received a subpoena or who is reasonably expected to receive a subpoena to give testimony in a criminal proceeding, or such person's relatives, friends or associates who are reasonably endangered by the person's participation in the criminal investigation or proceeding.

"Prosecuting officer " means the attorney general or a district attorney.

Section 2. A witness protection program is hereby established to be administered by the Office of Victim Assistance, which shall coordinate the efforts of state, county and local law enforcement agencies to protect the health, safety, and welfare of witnesses and reimburse those agencies for the costs of such efforts, subject to appropriation.

Section 3. Protection services provided to a witness may include, but shall not be limited to :

(a) armed protection or escort, marked or unmarked surveillance or periodic visits or contact by law enforcement officials prior, during or subsequent to a criminal

proceeding;

(b) physical relocation to an alternate residence;

(c) housing expenses;

(d) transportation or storage of personal possessions;

(e) basic living expenses including, but not limited to:

(1) food;

(2) transportation;

(3) utility costs;

(4) health care;

(f) petition for a protective order on any individual identified as a threat to a witness.

Section 4. (a) A witness who feels endangered shall request protection in writing. The written request shall be made to one of the following: a law enforcement officer, a prosecuting officer, a victim witness advocate assigned to the attorney general or a district attorney's office, or to the Office of Victim Assistance. A copy of all requests shall be forwarded to the Office of Victim Assistance as soon as is practicable.

(b) The prosecuting officer shall review all requests for protection and shall assess the level of threat. If the prosecuting officer determines that a witness is endangered due to the witness's involvement with any criminal investigation or proceeding, the prosecuting officer shall notify the Office of Victim Assistance and submit a plan for the protection of such witness.

(c) The Office of Victim Assistance shall review such plan and, if the plan complies with the guidelines established by the Office of Victim Assistance, the Office of Victim Assistance shall assist the prosecuting officer to coordinate the

efforts of state, county and local agencies to secure witness protection services, and shall reimburse those agencies for the costs of the services provided to protect the witness.

Section 5 (a) The prosecuting officer may disclose or refuse to disclose the identity or location of a protected witness, or any other matter concerning the witness or the program after weighing the danger such a disclosure would pose to the witness, the detriment it would cause to the general effectiveness of the program, and the benefit it would afford to the public or to the person seeking the disclosure, except that a prosecutor shall, upon the request of federal, state or local law enforcement officials, or pursuant to a court order, disclose to such officials the identity, location and criminal records relating to the protected witness when the prosecutor knows or the request indicates that the witness is under investigation for or has been arrested for or charged with a felony.

(b) Any person who, without the authorization of the prosecuting officer, knowingly discloses any information received from the Office of Victim Assistance, or the prosecuting officer under paragraph (a) of this section shall be punished by a fine of not more than $5,000 or imprisonment in jail or the house of correction for not more than two and one-half years, or both such fine and imprisonment.

(c) The prosecuting officer may provide protective services for the duration of the criminal investigation or proceeding or until the prosecuting officer determines that the witness is no longer at risk.

Section 6. If a prosecuting officer or other law enforcement agency determines that an imminent threat to the safety of a witness exists, he shall take any

temporary action he determines is necessary to protect the safety of the witness. The prosecutor or law enforcement agency shall inform the Office of Victim Assistance of the action taken and any related costs as soon as practicable. Any such costs, which would otherwise be in compliance with the guidelines established by the Office of Victim Assistance, shall be deemed to be reimbursable to the prosecuting officer or other law enforcement agency.

Section 7. Before providing protection to any witness under this chapter, the prosecuting officer shall enter into a memorandum of understanding with that witness to be signed by: the prosecuting officer, or his designee; the witness to be protected; the witness' guardian if he is a minor or incompetent; and the witness' attorney if he is represented by counsel. Each such memorandum of understanding shall include:

(a) The responsibilities agreed to by the witness while receiving protection, including, but not limited to, an agreement to:

(1) provide complete and truthful information to all appropriate law enforcement officials concerning all appropriate investigations and to testify in all appropriate proceedings;

(2) not commit any crime;

(3) take all necessary steps to avoid detection by others of the facts concerning the protection provided to that witness under this chapter;

(4) comply with the legal obligations and the civil judgments against that witness;

(5) cooperate with all reasonable requests of officers and employees of the commonwealth who are providing protection under this chapter;

(6) designate another person to act as an agent for the service of process;

(7) make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation;

(8) disclose any probation or parole responsibilities;

(9) regularly inform the appropriate law enforcement officials of the activities and current address of such witness.

(b) the names and telephone numbers of representatives of the prosecuting officer or law enforcement personnel to contact if the witness has questions or concerns regarding the witness's safety;

(c) the protection that the prosecuting officer has determined will be provided to the witness under this chapter;

(d) the procedures to be followed in the case of a breach of the memorandum of understanding, as established by the prosecuting officer.

Section 8. If a witness, after being offered protective services under this section, declines to receive such services, the prosecuting officer shall request that the witness make such refusal in writing.

Section 9. The commonwealth, its officers and employees and law enforcement personnel shall have immunity from civil liability for any decision declining or revoking protection to a witness under this chapter.

SECTION 2. The Office of Victim Assistance, in consultation with the Attorney General, the district attorneys, and state and local law enforcement officials, shall develop and issue appropriate guidelines to implement this chapter.

SECTION 3. The Office of Victim Assistance shall establish procedures to maximize federal funds for witness protection services.

SECTION 4. Commencing one year after the effective date of this chapter, the Office of Victim Assistance shall make an annual report to the general court, including the House and Senate Ways and Means Committees and the Joint Committee on Criminal Justice, no later than January 1 of each year on the fiscal and operational status of the program.

SECTION 5. Section 13B of chapter 268 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by in line 14 striking out the word "five" and inserting in place thereof the following word:- "fifty".